LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS
301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6429
BILL NUMBER: SB 252

DATE PREPARED: Dec 21, 2001
BILL AMENDED:

SUBJECT: Numerous Changes to Probate, Trust, and Tax Laws.

FISCAL ANALYST: Jim Landers
PHONE NUMBER: 232-9869

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides for various probate, trust, and tax amendments. The bill contains the following provisions:

Notice of Appraisal:.The bill requires the county Inheritance Tax appraiser to give notice of the date, time, and place of the appraisal by mail to each person who filed a request for notice and provided a mailing address. The bill also requires a probate court to give each person who filed a request for notice and provided a mailing address notice by mail of the date, time, and place of the hearing on the appraisal report and a copy of the court's determination.

Construction of Trusts: The bill establishes rules for interpreting trusts.

Removal of Corporate Trustee by Beneficiary: The bill extends a procedure allowing a trust beneficiary to petition the court for removal of a corporate trustee to beneficiaries of trusts executed before July 1, 1996. (Current law limits application of the procedure to trusts executed after June 30, 1996.)

Power of Attorney Accounting and Records: The bill makes various changes concerning the responsibilities of an attorney in fact. It specifies the length of time that an attorney in fact must retain records of transactions entered into on behalf of the principal. The bill provides that in the event of a principal's death, a request for an accounting must be requested not later than nine months after the date of the principal's death. The bill requires the costs incurred by an attorney in fact to prepare an accounting and defend the actions of the attorney in fact on behalf of the principal to be paid from the principal's asset holdings unless the attorney in fact breached a fiduciary duty to the principal or engaged in self-dealing. The bill provides that the attorney in fact may employ persons to assist the attorney in fact in the performance of fiduciary duties. It also provides that a power of attorney may in writing delete from, add to, or modify in any manner a power incorporated by reference.

Rule Against Perpetuities and Perpetual Trusts: The bill amends the rule against perpetuities to allow for the creation of a perpetual trust.

Liability of Nonprobate Transferees: The bill provides that a transferee of a nonprobate transfer is liable for allowed claims against a decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the decedent's probate estate is insufficient to satisfy those claims and allowances. The bill limits the liability of the nonprobate transferee to the value of nonprobate transfers received or controlled by the transferee. It repeals a provision concerning the liability of a person who receives payment from a multiple party account for claims against the estate.

Establishing Paternity for Inheritance Tax Purposes: The bill allows a putative father, for the purpose of inheritance, to execute a paternity affidavit to establish the paternity of a child born out of wedlock.

Production of Will in Court: The bill requires the person having custody of a will to deliver the will to the court upon written demand by the personal representative or upon court order. The bill also relieves the person having custody of the will of the duty to deliver the will in the absence of a written demand or court order.

Other: The bill also repeals a superseded provision concerning the liability of a person who receives payment from a multiple party account for claims against the estate.

(The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective Date: July 1, 2002.

Explanation of State Expenditures:

Explanation of State Revenues: *Liability of Nonprobate Transferees:* The bill could potentially have a minimal impact on revenue from the Inheritance Tax. The impact would arise to the extent that any of the following occur due to the procedures established in the bill:

(1) A nonprobate transfer that would otherwise be taxable is paid to claims against the decedent's probate estate and, therefore, may be deducted for purposes of the Inheritance Tax.

(2) A nonprobate transfer that would otherwise be taxable is paid as the statutory allowance to the decedent's surviving spouse and, therefore, is exempt from the Inheritance Tax. (The allowance to the surviving spouse is $25,000.)

(3) A nonprobate transfer to a Class B or Class C transferee is paid as the statutory allowance to the decedent's children (Class A transferees) and, therefore, would be exempt from the Inheritance Tax. (The allowance is $25,000 and is provided only if the decedent does not have a surviving spouse, and then only if the children are under 18 years of age. The Class A exemption is equal to $100,000.)

The other provisions of the bill are not expected to impact state revenues.

Explanation of Local Expenditures: *Notice of Appraisal:* The bill changes current requirements such that only those persons filing a request will be: (1) notified by mail of the Inheritance Tax appraisal and the filing of the appraisal with the probate court; and (2) mailed a copy of the probate court's determination of the value of the property interest transferred. The bill also eliminates the requirement that the probate court publish notice of the appraisal filing if the address of an interested party is unknown. Potentially, this could result in an administrative saving to the counties and probate courts. However, the extent of any saving is indeterminable.

The other provisions of the bill are not expected to impact local expenditures.

Explanation of Local Revenues: *Liability of Nonprobate Transferees:* Since counties retain 8% of the Inheritance Tax collected on transfers made by Indiana residents, the bill also could have a minimal impact on revenues collected by counties (see *Explanation of State Revenues*). It is important to note that a reduction in the amount of Inheritance Tax retained by counties due to the bill may be reimbursed by the state under the replacement provision established by P.L. 254-1997. The replacement provision was established when the Class A exemption was increased on July 1, 1997. The replacement provision guarantees that in each fiscal year each county receives an amount under the Inheritance Tax that is equal to the five-year annual average amount of Inheritance Tax revenue retained by that county from FY 1991 to FY 1997, excluding the highest and lowest years. Therefore, a reduction in tax retained by a county due to the bill would be reimbursed only to the extent that the changes made by the bill cause the amount of tax revenue retained by the county to fall below its guaranteed amount. Currently, most counties are retaining more Inheritance Tax revenue than is guaranteed under the replacement procedure.

The other provisions of the bill are not expected to impact local revenues.

State Agencies Affected:

Local Agencies Affected: Counties, courts with probate jurisdiction.

Information Sources: Bill Reynolds, Department of State Revenue, (317) 232-2156.